

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:1

PLR-107711-21

Date:

September 20, 2021

Legend

Distributing =

Controlled =

DRE 1 =

Distributing Business =

Controlled Business =

State A =

X =

Other Continuing

Arrangement Agreements =

True-Up Obligations =

Transition Services
Agreement =

Dear :

This letter responds to a letter dated March 25, 2021, as supplemented by subsequent information and documentation, submitted on behalf of the taxpayer, requesting rulings under Sections 355 and 368(a)(1)(D), and related provisions of the Internal Revenue Code of 1986, as amended, and related regulations, with respect to the proposed transaction described below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This letter is issued pursuant to Rev. Proc. 2021-1, 2021-1 I.R.B. 1, and Rev. Proc. 2017-52, 2017-41 I.R.B. 283, regarding a Transactional Ruling for a Covered

Transaction. This office expresses no opinion as to the overall tax consequences of the proposed transaction or as to any issue not specifically addressed by the rulings below.

This office has made no determination regarding whether the Distribution (as defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see Section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation, or any predecessor or successor of the distributing corporation or the controlled corporation, within the meaning of Treas. Reg. § 1.355-8 (see Section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

Summary of Facts

Distributing, a publicly traded, widely held, State A corporation, is the parent company of a worldwide group of domestic and foreign affiliates (the “Distributing Group”). Distributing and its domestic affiliates join in the filing of a consolidated U.S. federal income tax return. At the time of the proposed transaction, Distributing will have a single class of voting common stock issued and outstanding.

The Distributing Group has been actively engaged in two businesses, the Distributing Business and the Controlled Business. The Distributing Business is conducted by Distributing and various direct and indirect subsidiaries of Distributing. The Controlled Business is conducted by DRE1 and various direct and indirect subsidiaries of DRE1.

Immediately before the proposed transaction will be undertaken, Distributing will own all the issued and outstanding equity interests in DRE1. DRE1 directly or indirectly will hold all the assets, liabilities, and entities that constitute the Controlled Business.

Proposed Transaction

To effect the separation of Controlled, Distributing has proposed the following series of transactions (the “Proposed Transaction”):

- (1) DRE 1 will repay an intercompany debt obligation payable to Distributing in the approximate amount of \$x.
- (2) Distributing will form Controlled and will contribute all the ownership interests in DRE 1 to Controlled (the “Contribution”). Prior to and following the Contribution, Distributing will own all of the issued and outstanding shares of Controlled.
- (3) Distributing will distribute to the Distributing shareholders, on a pro rata basis, all the issued and outstanding shares of Controlled owned by Distributing (the “Distribution”). If applicable, cash may be distributed in lieu of fractional shares.

Distributing and Controlled will enter into an agreement that sets forth the terms of the Proposed Transaction and will govern the allocation of various items including liabilities (the "Separation Agreement"). Distributing also will enter into certain customary agreements (the "Agreements") with Controlled regarding tax (the "Tax Matters Agreement") and employee matters (the "Employee Matters Agreement"). Following the Distribution, Distributing will have certain continuing business relationships with Controlled, including the Transition Services Agreement, the Other Continuing Arrangement Agreements, and the True-Up Obligations.

Representations

Except as otherwise set forth below, Distributing makes all the representations in section 3 of the Appendix to Rev. Proc. 2017-52, in the form set forth therein.

Distributing does not make representations 7, 24, 25 and 40. Representation 7 is inapplicable, because the Distribution does not involve a Split-off or a Split-Up (each as defined in section 2 of the Appendix to Rev. Proc. 2017-52). Representations 24 and 25 are inapplicable, because neither Distributing nor any other party to the Proposed Transaction uses the cash method of accounting or a similar method. Representation 40 is inapplicable, because the Distribution does not involve the distribution of stock from one member of an Expanded Affiliated Group (as defined in section 2 of the Appendix to Rev. Proc. 2017-52) to another member of such group.

Distributing makes the following alternative representations set forth in section 3 of the Appendix to Rev. Proc. 2017-52: 3(a), 8(b), 11(a), 15(b), 22(b), 31(a) and 41(a).

Distributing submits a modified version of representation 33 as set forth in Section 3 of the Appendix to Rev Proc. 2017-52:

Payments made in connection with all continuing transactions (other than payments for certain services to be provided on a transitory basis following the Distribution) between Distributing and Controlled after the Distribution will be for fair market value based on arm's-length terms.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Proposed Transaction:

- 1) The Contribution together with the Distribution will be a "reorganization" within the meaning of Sections 368(a)(1)(D). Distributing and Controlled will each be "a party to the reorganization" within the meaning of Section 368(b).
- 2) Distributing will recognize no gain or loss on the Contribution. Sections 361(a) and 357(a).
- 3) Controlled will recognize no gain or loss upon the Contribution. Section 1032(a).

- 4) The basis of Controlled in each asset received from Distributing in the Contribution will equal the basis of the asset in the hands of Distributing immediately before the Contribution. Section 362(b).
- 5) The holding period of Controlled in each asset received from Distributing in the Contribution will include the period during which such asset was held by Distributing. Section 1223(2).
- 6) Distributing will recognize no gain or loss upon the Distribution. Section 361(c).
- 7) Distributing shareholders will recognize no gain or loss (and no amount will be includible in income) upon the receipt of Controlled stock in the Distribution. Section 355(a).
- 8) The aggregate basis of the Distributing stock and the Controlled stock in the hands of each Distributing shareholder immediately after the Distribution (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will equal the aggregate basis of the Distributing stock held by such Distributing shareholder immediately before the Distribution, allocated between the stock of Controlled and Distributing in proportion to the fair market value of each immediately following the Distribution in accordance with Treas. Reg. § 1.358-2(a). Section 358(b)(2) and (c).
- 9) The holding period of the Controlled stock received by each Distributing shareholder in the Distribution (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will include the holding period of the Distributing stock held by such shareholder, provided that such Distributing stock was held as a capital asset on the date of the Distribution. Section 1223(1).
- 10) Earnings and profits will be allocated between Controlled and Distributing in accordance with Section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).
- 11) The receipt by Distributing shareholders of cash in lieu of fractional shares of Controlled stock will be treated for federal income tax purposes as if the fractional shares had been distributed to the Distributing shareholders as part of the Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss) recognized, if any (determined using the basis allocated to the fractional shares in ruling (8)), will be treated as capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder. Section 1001. Such gain (or loss) will be short-term or long-term capital gain (or loss) (determined using the holding period provided in ruling (9)).
- 12) Following the Distribution, Controlled will not be a successor of Distributing for purposes of Section 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are "includable corporations" under Section 1504(b) and satisfy the ownership requirements of Section 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with Controlled as the common parent.

13) Payments made between any of Distributing and Controlled and their respective affiliates under the Separation Agreement, the Transition Services Agreement, the Tax Matters Agreement, the Other Continuing Arrangement Agreements, and the Employee Matters Agreement or with respect to any True-Up Obligations, in each case regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning before and ending after the Distribution and (ii) will not become fixed and ascertainable until after the Distribution, will be viewed as occurring immediately before the Distribution. See Arrowsmith v. Commissioner, 344 U.S. 6, 73 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

Caveats

No opinion is expressed or implied about the tax treatment of the Proposed Transaction under any other provision of the Code or regulations or effects resulting from the Proposed Transaction that are not specifically covered by the above rulings. In particular, this office has made no determination with respect to the tax consequences of any post-Distribution non-arm's length transactions between Distributing and Controlled.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, copies of this letter are being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Richard K. Passales

Richard K. Passales
Senior Counsel
(Corporate)

cc: